

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 10-03248 MMM (AJWx)

Date June 11, 2010

Title W. Heritage Ins. Co. v. R.L. Clotworthy Const. Inc., et al.

Present: The Honorable MARGARET M. MORROW

ANEL HUERTA

N/A

Deputy Clerk

Court Reporter

Attorneys Present for Plaintiffs:

None

Attorneys Present for Defendants:

None

Proceedings: **Order to Show Cause Why Action Should Not Be Dismissed for Lack of Subject Matter Jurisdiction**

**I. FACTUAL AND PROCEDURAL BACKGROUND**

On April 29, 2010, plaintiff Western Heritage Insurance Company filed this action against defendants R.L. Clotworthy Construction, Inc., Metro PCS, Jason Ortiz, Royal Street Communications California LLC, and Yukon LLC, seeking declaratory relief regarding the parties' rights and obligations under an insurance contract issued by plaintiff.<sup>1</sup> Western Heritage has been defending Clotworthy in a separate action brought by Ortiz against Clotworthy, Metro, Yukon and Royal, among others.<sup>2</sup> Western Heritage states that it has or will pay in excess of \$75,000 in attorneys' fees and costs defending the underlying suit.<sup>3</sup> Further, it alleges that Yukon, Metro, and Royal are likely to seek indemnification and/or defense funds from Western Heritage or its insured in connection with the underlying suit.<sup>4</sup>

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<sup>1</sup>Complaint, Docket No. 1 (Apr. 29, 2010).

<sup>2</sup>*Id.*, ¶ 16.

<sup>3</sup>*Id.*

<sup>4</sup>*Id.*, ¶ 17.

Western Heritage asserts that the court has diversity jurisdiction under 28 U.S.C. § 1332.<sup>5</sup> It alleges that it is a citizen of Arizona, Metro is a citizen of Texas, Ortiz is a citizen of California, and Clotworthy is a citizen of California.<sup>6</sup> It also alleges that Royal is a limited liability corporation organized under the laws of Delaware with its principal place of business in Texas, and that Yukon is a limited liability corporation organized under the laws of California.<sup>7</sup> Although asserting that Royal and Yukon are both limited liability corporations, plaintiff does not allege the citizenship of their respective members.

## II. DISCUSSION

Federal courts have subject matter jurisdiction over suits between citizens of different states where the amount in controversy exceeds the sum or value of \$75,000. 28 U.S.C. § 1332(a). “Section 1332 requires complete diversity of citizenship; each of the plaintiffs must be a citizen of a different state than each of the defendants.” *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001). The Ninth Circuit treats limited liability corporations like partnerships for purposes of diversity jurisdiction. See *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006) (applying the standard used by sister circuits treating LLCs like partnerships). Thus, “an LLC is a citizen of every state of which its owners/members are citizens.” *Id.*; see also *Marseilles Hydro Power, LLC v. Marseilles Land and Water Co*, 299 F.3d 643, 652 (7th Cir. 2002) (explaining that “the relevant citizenship [of an LLC] for diversity purposes is that of the members, not of the company”); *Handelsman v. Bedford Village Assocs., Ltd Partnership*, 213 F.3d 48, 51-52 (2d Cir. 2000) (recognizing that “a limited liability company has the citizenship of its membership”).

Although it states that Royal and Yukon are limited liability corporations, Western Heritage has not alleged the citizenship of their respective members.<sup>8</sup> As a result, the court is unable to determine whether there is complete diversity of citizenship between plaintiff and defendants.

## III. CONCLUSION

For the reasons stated, the court directs plaintiff to show cause, on or before **June 30, 2010**, why the court should not dismiss this action for lack of subject matter jurisdiction. Plaintiff must demonstrate that there is complete diversity between it and the respective members of defendants Royal and Yukon to establish that the court has jurisdiction to hear this matter under 28 U.S.C. § 1332.

<sup>5</sup>*Id.*, ¶ 9.

<sup>6</sup>*Id.*, ¶¶ 1, 5, 6.

<sup>7</sup>*Id.*, ¶¶ 3-4.

<sup>8</sup>Complaint, ¶¶ 3-4.